

### **Remarks**

While applicants respectfully submit the finality of the previous rejection was premature, nevertheless, reconsideration of the instant application is respectfully requested in light of the above-amendments and following remarks.

#### **I. STATUS OF THE CLAIMS**

Claims 1, 3-4, 9-12, and 17-18 are now pending. Claim 1 has been amended to incorporate the limitations of previous claims 2 and 7. Claim 11 has been amended to address an informality. Claim 12 has been amended to recite from about 2 to about 7 percent of anionic surfactant and a ratio of about 1:1 to about 5:1 of anionic surfactant to polymer. Support for such amendment can be found, for example on pages 5 of the specification and in the claims. have been amended to facilitate prosecution. Claims 2, 5-7, and 13-15 have been canceled without prejudice. No new matter has been added.

#### **II. THE CLAMED INVENTION IS PATENTABLE OVER SHANA'A**

The Examiner rejected the pending claims under 35 U.S.C. 103(a) as being obvious in view of U.S. Patent No. 6,737,394<sup>1</sup> issued to Shana'a (hereinafter "Shana'a"). More specifically, the Examiner asserted that Shana'a discloses isotropic cleansing compositions comprising surfactants and a thickening agent, including hydrophobically modified, crosslinked, polyacrylates. While the Examiner asserted that "the [Shana'a] composition optionally contains a noionic surfactant, which encompasses that are free of nonionic surfactants . . .", the Examiner further acknowledged that Shana'a "does not require such a composition that is free of nonionic surfactants with sufficient specificity to constitute anticipation." Nevertheless, the Examiner concluded that "[i]t would have been obvious to a person of ordinary skill in the art at the time of the invention to have formulated a composition . . which was free of non-ionic surfactants, because such compositions fall within the scope of those taught by Shana'a et al."

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<sup>1</sup> Applicants respectfully do not necessarily agree that this reference is properly cited as prior art and hereby reserve the right to swear behind such reference.

In reply, applicants respectfully submit that the claimed invention is patentable over Shana'a. In particular, applicants note that not only does Shana'a fail to provide the requisite motivation to combine the teachings thereof to achieve the any particular compound having the recited combinations of anionic surfactant, hydrophobically-modified polymer, in the recited amounts, that are substantially free of non-ionic surfactants, as now claimed, but *moreover*, Shana'a fails to teach or suggest the *unexpected results* discovered by applicants to be associated with the claimed compositions having the recited combinations of anionic surfactant, hydrophobically-modified polymer, in the recited amounts, that are substantially free of non-ionic surfactants. In light of such unexpected results and other arguments, the claimed invention is patentable over Shana'a.

As illustrated in the Examples of the instant specification, applicants have discovered unexpectedly that compositions having the specific combination of surfactants and hydrophobically-modified polymers as now claimed exhibit unexpectedly low irritation properties as compared to a variety of comparable compositions having surfactants, surfactant amounts, polymers, and/or polymer amounts *outside* of the claimed compositions (though still potentially *within* the scope of the Shana'a disclosure). In particular, as described in Tables 7 and 8, and in the discussion on pages 35-36 of the application, applicants have discovered that the claimed compositions exhibit a TEP value (related to irritation, wherein higher TEP value is lower irritation (see specification, pages 25-26), that tends to be at least about 1.2 to 1.6 or more times higher than the TEP values of comparable compositions (for example, compare Example 19 (within the claimed invention: 3% anionic, 1.8% SF-1 polymer, 0% non-ionic) to each of Examples 14-18 (outside the claimed invention with 0% polymer of the claimed invention). As shown by the various TEP values reported in Table 8, the particular TEP value associated with various combinations of surfactants and hydrophobically-modified polymers is not readily predictable. Nevertheless, applicants have discovered unexpectedly that the claimed compositions comprising the claimed amounts of anionic surfactant, polymer, and substantial absence of non-ionic polymer exhibit synergistically high TEP values and thus offer a significant reduction in skin irritation as compared to other comparable compositions, such as other combinations within the scope of Shana'a.

Furthermore, as shown in Example 1 vs. 3, applicants discovered compositions free of non-ionics tend to have irritation characteristics at least as low as, if not better, than comparable compositions with nonionic surfactants. Such result is unexpected in that non-ionic surfactants are well-known to be irritation-mitigants in personal care compositions. Accordingly, such teachings would suggest that the absence of non-ionics in a comparable composition would tend to result in a higher irritation composition. Applicants have herein surprisingly found that not to be the case for the claimed compositions. Rather, the claimed compositions having the claimed components and amounts have irritation characteristics at least as good or better than comparable compositions comprising non-ionic surfactants.

There is no teaching or suggestion in Shana'a that any particular composition specifically comprising anionic surfactants and the claimed hydrophobically-modified polymers combined with less than 0.5 weight percent of non-ionic surfactant are capable of producing compositions having unexpectedly low irritation associated therewith. There is also no teaching in Shana'a that certain compositions comprising A and B could be made to be as low irritating as comparable compositions wherein a known irritant mitigator (non-ionics) is substantially removed. Rather, the broad teaching of Shana'a suggests that a variety of compositions comprising combinations of surfactants and polymers *outside* of the claimed ranges are acceptable and equally suitable for use as those presently claimed. Accordingly, one of skill in the art would not be motivated, nor provided any suggestion, to achieve an article of the claimed invention comprising the specifically recited surfactants and polymers in the recited amounts and having the unexpected properties discovered by applicants to be associated therewith in light of the teachings Shana'a and otherwise in the art. The claimed invention is therefore patentable over the Examiner's rejection and should be allowed.

### **III. THE PROVISIONAL DOUBLE PATENTING REJECTIONS ARE RENDERED MOOT**

The Examiner provisionally rejected all pending claims under the doctrine of obviousness-type double patenting in view of: claims 1-14 of copending Application No.

10/650,398; claims 1-20 of copending Application No. 10/650,573; and claims 1-17 of copending Application No. 10/650,495.

While applicants do not necessarily agree with the Examiner's rejections in any regard, nevertheless, because such provisional rejections are the only rejections remaining in view of the amendments and remarks herein, and to applicants knowledge, no patent has issued based on the above-cited applications, applicants submit such rejections should be withdrawn pursuant to MPEP 804(I)(B), and the instant case allowed. Should any of the above applications issue into a patent prior to allowance of the instant application, the Examiner is requested to contact the undersigned to allow applicants to consider filing a Terminal Disclaimer, or otherwise overcome any resulting non-provisional double patenting rejection.

#### **IV. CONCLUSION**

In light of the above amendments and remarks, applicants respectfully submit the application is in condition for allowance and requests an early notice of allowance for this application. Should the Examiner have any questions regarding this submission, please contact the undersigned.

Respectfully submitted,

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